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**OFFICE OF PETITIONS**

In re Application of :  
Bilardi et al. :  
Application No. 09/854,213 : DECISION ON PETITION  
Filed: 11 May, 2001 :  
Atty Docket No. YOR920010439US1 :

This is a decision on the petition filed on 21 March, 2006, under 37 CFR 1.137(b),<sup>1</sup> to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 17 September, 2003, for failure to timely submit the issue and publication fees in response to the Notice of Allowance mailed on 16 June, 2003, which set a three (3) month period for reply. Notice of Abandonment was mailed on 17 October, 2003.

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<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Petitioners state, *inter alia*, that "[t]he entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional."

The record does not necessitate a finding that the delay between 17 September, 2003, and 23 March, 2006, was not unintentional.

Rather, the Patent and Trademark Office is relying on petitioners' duty of candor and good faith and accepting the statement that the entire delay in filing the required reply and until the filing of the petition was unintentional.<sup>2</sup>

The revocation and power of attorney and change of correspondence address is accepted.

This application is being referred to the Publishing Division for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Encl: Notice Regarding Change of Power of Attorney  
Notice of Acceptance of Power of Attorney

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<sup>2</sup>See Changes to Patent Practice and Procedure 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).